IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1694 of 1982
WITH
CIVIL REVISION APPLICATION No 1695 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

Nos. 1 to 5 No

USHABEN P MAHARAJWALA

Versus

BHIKCHAND INDUJI

Appearance:

MR SB VAKIL for Petitioners

MR MG NAGARKAR FOR MR SN SHELAT for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 14/07/98

COMMON ORAL JUDGEMENT

These two revisions under section 29(2) of the Bombay Rent Act arising out of the common judgment can be disposed of by a common judgment.

The landlord revisionist filed Suit No.1272/72

for declaration and injunction that the disputed premises was let out to the respondent for running soap factory and he is not entitled to change the user of the said premises and is not entitled to use it as his residence. Another Suit No. 1283/74 was filed by the revisionist landlord seeking eviction of the tenant-respondent on four grounds viz. sub-letting the premises, change of user, non payment of rent for more than six months and causing material alterations in the suit premises.

The case of the landlord was that the disputed premises was let out to the respondent on Rs.101/- p.m. for running a soap factory. In breach of the terms of the tenancy the respondent started using the suit premises as residence which amounted to change of user and breach of terms of tenancy. It was also alleged that the defendant had illegally sub-let the suit premises to the neighbours for storing cement etc. The ground of sub-letting was added after amendment of the plaint. It was further pleaded that the respondent was in arrears of rent since 1.6.1971. Notice of demand dated 8.7.1974 was served. The defendant was to pay municipal taxes and educational cess over and above the agreed rent. He did not pay the arrears of rent within a month of service of notice of demand. Hence he was liable to be evicted.

It was also pleaded that the tenant was causing alteration in the suit premises.

The injunction suit was filed with the allegation that the tenant was about to make material alterations in the suit premises for his residence. The declaration was also sought that the tenant is not entitled to raise a construction of permanent nature and to change user of the suit accommodation.

Both the suits were resisted by the respondent. His case was that the suit premises was let out for business as well as for residential purpose and that the premises was used as such for the two purposes since inception of tenancy. It was denied that he committed breach of terms of tenancy. It was further pleaded that the standard rent was less than Rs.100/- and the tenant is not liable to pay municipal tax, education cess. The dispute regarding standard rent was raised by the tenant in reply to plaintiff's previous notice in 1969 and since this dispute was not resolved and was pending when the notice was given no decree for eviction could be passed under section 12(3)(a) of the Bombay Rent Act. He further pleaded that he was ready and willing to pay the entire arrears of rent.

The Trial Court dismissed the two suits. The appeals were filed by the landlord revisionist. The two appeals were also dismissed by a common judgment. It is therefore, this revision.

After going through the judgments of the two Courts below I find that there is concurrent finding of the two Courts below on all the four disputed controversies and such findings have been arrived at by proper appreciation of oral and documentary evidence on record. Consequently revisional interference is hardly justified. However, with a view to find out whether the judgment is in accordance with law or perverse I have carefully examined the judgments of the two Courts below.

So far as the plea of material alteration is concerned, it was not pressed. Moreover minor alteration in the suit premises for its beneficial enjoyment cannot be a ground for passing the decree for eviction against the tenant.

Plea of sub-letting was also not pressed. The allegation of sub-letting was not taken in the notice nor it was taken initially in the plaint. It was introduced subsequently by getting the plaint amended. However no satisfactory evidence came forward from the side of the landlord when the tenant in chief has parted with exclusive possession of either whole or part of the premises to the neighbours for storing the cement bags etc. A vague allegation was made and vague evidence was given on the point and as such in the absence of specific proof that exclusive possession was transferred by the tenant in chief to some other persons and that too for valuable consideration the plea of sub-letting was not of any avail to the landlord for getting decree for eviction against the respondent.

So far as the plea of change of user is concerned it was decided by the two Courts below against the landlord. After perusing the oral and documentary evidence on record and also circumstances of the case the two Courts below found that the premises in suit was no doubt let out for running a soap factory but there was no restrictive covenant prohibiting the tenant for using it as residence. Rent note was in possession of the landlord but it was not filed. The Trial Court did not accept the statement of the landlord that the rent note was destroyed by white ants. No secondary evidence on rent note was produced. Consequently if the Trial Court disbelieved the explanation of the landlord regarding

destruction of rent note it was entitled to draw inference that if the rent note would have been filed it would have disclosed the purpose for which premises was let out and also to find out whether there was any restrictive covenant in the rent note or not. From the evidence and the circumstances of the case the two Courts below have rightly concluded that the possibility that the workers of the factory were cooking meals and sleeping in the night in the disputed premises cannot be ruled out. The two Courts below also rightly observed that because the tenant was previously residing with his relatives, uncle etc. in two roomed accommodation in front of the disputed accommodation and due to shortage of accommodation he shifted to the disputed accommodation. They also rightly found from the evidence on record that the main purpose of manufacturing soap was not given up and soap factory was not closed down. For some time the soap factory was closed because of some suit filed by the creditors against the respondent in which the soap factory was attached before judgment. The said attachment before judgment was subsequently withdrawn and there is categorical finding of the Courts below that the soap factory was still running on the date of the suit and on the date of the evidence. There was thus no change of user of the suit premises.

If there was no change of user of the suit premises the landlord was hardly entitled to any injunction against the tenant. The landlord also failed to establish that the tenant was intending or was going to raise any permanent structure which may change the nature of the suit accommodation and cause damage to or diminish its value and utility. Consequently the two Courts below were justified in dismissing the suit for injunction.

So far as the arrears of rent is concerned, the two Courts below found that Section 12(3) (a) could not be pressed in service for eviction of the tenant for the obvious reason that the deispute regarding standard rent was raised by the tenant much before the service of disputed notice of demand and eviction. An earlier notice dated 6.2.1969 exhibit 126 was served by the landlord upon tenant and in reply to that notice dispute of the standard rent was raised by the tenant. The said dispute was not resolved till the notice of suit was served. The said dispute was not a malafide dispute. The Courts below found that it was a bonafide dispute regarding standard rent. Simply because the Trial Court fixed the standard rent in the suit itself at Rs.101/p.m. it cannot be said that there was no bonafide dispute

regarding the standard rent. If there was bonafide dispute regarding standard rent no decree for eviction could be passed in terms of Section 12(3)(a) of the Act.

Likewise no decree for eviction could be passed under the aforesaid section because the landlord claimed municipal tax and education cess over and above Rs.101/-p.m. The respondent denied his liability to pay these taxes. Be that may on the claim of the landlord revisionist itself it is obvious that he claimed municipal tax and education cess over and above the agreed rent. Consequently it was not a case where rent was payable monthly in as much as municipal taxes and education cess are not payable monthly. If the rent was not payable monthly the failure of the tenant to pay the rent within month of service of notice of demand would not render him liable for eviction. For these two reasons the Courts below were justified in refusing to pass decree for eviction under section 12(3)(a) of the Act.

The Courts below have also granted benefit to the tenant under section 12(3)(b) of the Act. If no decree for eviction could be passed under section 12(3)(a) of the Act, the landlord could not have prayed for decree for eviction under section 12(3)(b) of the Act. If this was so then even if the tenant did not strictly comply with the provisions of section 12(3)(b) of the Act, he could not be evicted. As such the two Courts below were justified in dismissing the suit for eviction.

In view of the aforesaid discussions it is clear that the judgments and decrees of the two Courts below dismissing the two suits and two appeals of the landlord-revisionist are in accordance with law and as such no interference in this revision is required. The two revisions being without merit are liable to be dismissed and are hereby dismissed. No order as to costs in the circumstances of the case.

Sd/-

(D.C.Srivastava,J)

m.m.bhatt